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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,860	07/28/2003	Joseph S. Bieganeck	249.303	3850
28785	7590	07/14/2005	EXAMINER	
JOHN R LEY, LCC 5299 DTC BLVD, SUITE 610 GREENWOOD VILLAGE, CO 80111			SAFAVI, MICHAEL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/628,860	Applicant(s) BIEGANEK ET AL.	
	Examiner M. Safavi	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 27, 2004 & April 25, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-22,24-27 and 29-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-22,24-27 and 29-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/27/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Information Disclosure Statement

The information disclosure statement filed December 27, 2004 fails to fully comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because Applicant has not provided a date of publication for the paper listed under 'Other Documents'. It has been placed in the application file, but the information referred to therein, with respect to the paper listed under 'Other Documents', has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Election/Restrictions

Applicant's election with traverse of the invention of Group I in the reply filed on April 25, 2005 is acknowledged. The requirement for restriction is withdrawn with claims 1, 3, 4, 6-22, 24-27 and 29-52 being examined as to the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 6-22, 24-27 and 29-52 are, as best understood, rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,163,737 to Navach et al.

Navach et al. discloses, Fig. 7, a support contour comprising "relief areas" and "support areas". The "support areas" are situated at lateral rear portions of the cushion while the "relief areas" are situated at lateral portions of the cushion just forward of the "support areas", **claims 1 and 22**. Navach et al. also discloses a method of configuring a support contour to contact and support a person sitting on the support contour comprising defining relief areas in the support contour, defining support areas in the support contour and positioning the relief areas and the support areas. A back wall can be seen along the back of the cushion with a "center cavity" located at the center of the cushion with a "lateral area" on opposite sides of the cushion, **claims 12, 13, 46, and 47**. Each "lateral area" can be seen as "curving downwardly and inwardly", **claim 13**. A "posterior thigh protrusion area", (though not clearly disclosed in the instant specification), can be seen just in front of the "center cavity", (e.g., raising up and leading into 78, for example), **claims 14 and 19**. Channel area is that portion towards the rear of the cushion, **claim 15**. A "pelvic protrusion area", (though not clearly disclosed in the instant specification), can be seen rising up from the "center cavity", **claim 16**. Navach et al. discloses use in/on a wheelchair, **claims 20 and 30**. A "clearance area" is located just in front of the "center cavity", **claim 21**. Navach et al. discloses a support structure comprising "a matrix of resilient adhered-together plastic

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beads" with "spaces between the beads to establish permeability for air movement within the support structure" by virtue of the open cell foam structure of the Navach et al. support, col. 4, line 47; col. 5, lines 10-11; col. 6, lines 40 and 46, **claims 38-43**.

The language of claims 1, 3, 4, 6-22, 24-27 and 29-52 is replete with desired effect or a presumed consequence of the claimed cushion. As such, Navach et al. meets the limitations of claims 1, 3, 4, 6-22, 24-27 and 29-52 in that the cushion shown by Navach et al. can present the same effect depending upon how it is utilized, (e.g., size of person, weight of person, how a person specifically sits upon the cushion, etc.).

Response to Arguments

Applicant's arguments filed December 27, 2004 have been fully considered but they are not persuasive. As set forth above the cushion of Navach et al. does disclose all of the positively recited structural features presented with claims 1, 3, 4, 6-22, 24-27 and 29-52. Otherwise, Applicants' arguments appear directed to presumed effect or a desired consequence, which does not serve to overcome the above rejection involving Navach et al.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



**MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354**

M. Safavi
June 30, 2005